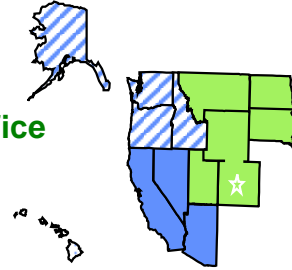




**U.S. Army Environmental Center
Western Regional Environmental Office
REGIONAL UPDATE**



JUNE 1999

REGION VIII EDITION

This publication provides current information on significant regulatory and legislative developments and related information in the Federal Region VIII area (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming) that affect U.S. Army activities and operations. We appreciate your feedback and encourage you to submit suggestions for future discussion. Please contact us at, Western Regional Environmental Office, ATTN: SFIM-AEC-WR, Building 111, Commerce City, CO 80022-1748, commercial (303) 289-0125, DSN 749-2125, FAX (303) 289-0272, or e-mail: redgerto@pmrma-emh1.army.mil.

REGIONAL UPDATES/ALERTS AVAILABLE ON THE INTERNET

Current and past issues of the *Regional Update & Regional Alerts* for Regions VIII, IX, and X are available on the Internet at <http://aec.army.mil/prod/usaec/ro/western/updates/wupdates.htm>.

FEDERAL REGULATORY DEVELOPMENTS

Air Quality:

EPA Ozone and PM2.5 Rules Struck Down

In a surprising victory for industry, on 14 May 1999, the United States Court of Appeals for the District of Columbia Circuit struck down the U.S. Environmental Protection Agency's (EPA) NAAQS for ozone and PM2.5. The court based its decision on the non-delegation doctrine, a legal principle that prohibits Congress from delegating to executive agencies (such as the EPA) Congress' legislative powers. According to the D.C. Circuit, the EPA acted as a legislative body rather than as an entity that merely implements legislation when it established the ozone and PM2.5 standards without an "intelligible principle" to channel its application of "the factors it considered." The decision runs counter to many previously decided cases that grant the EPA considerable discretion to exercise policy judgment in setting standards when there is uncertainty about the health effects of pollutants. The court distinguished those earlier cases by pointing out that in those cases the non-delegation argument had not been presented. Expect this case to go to the Supreme Court. For more information, contact Ms. Diane Connolly at (303) 289-0459 (commercial) or 749-2459 (DSN).

Water Quality:

Proposed Revisions to the National Primary Drinking Water Regulations

Public water systems must notify their customers when they violate the U.S. Environmental Protection Agency (EPA) or state drinking water standards or provide drinking water that may pose a risk to consumers' health. Under 1996 revisions to the Safe Drinking Water Act, the EPA is proposing revisions to the existing public notification rule to more specifically tailor the form, manner and timing of the notices for health risks. The proposal will require water systems to provide notice within 24 hours for violations posing an acute risk to health from short-term exposure. The current regulation requires such notices within 72 hours. The proposal also will allow water systems to group minor violations into a single annual report, rather than meet the existing requirement to provide separate notices within three months. The proposed rule is closely aligned with the related Consumer Confidence Report regulation, which requires community water systems to issue an annual report on drinking water quality. The proposal was

published in the Federal Register on 13 May 1999. The EPA is requesting public comment through 13 July 1999 and has scheduled public meetings. A fact sheet, copy of the proposal, and a draft public notification handbook are available on the Internet at <http://www.epa.gov/safewater/>. Contact the Safe Drinking Water Hotline at (800) 426-4791 for more information.

EPA Draft Public Notification Handbook Available for System Owners

Drinking water system owners and operators are provided step-by-step instructions on notifying the public of violations of federal standards in a draft Public Notification Handbook announced on 13 May 1999 by the EPA (64 FR 25880). By explaining new public notification requirements in simple, clear language and providing specific examples of notices, the EPA hopes the handbook will lead to an improved public notification process. The handbook can help systems determine what tier a violation falls into and what agency (such as a state regulator) to notify in the case of violations, the EPA states. It also summarizes the public notification requirements, describes delivery requirements for notices, and describes how to develop a notice. The EPA also issued a notice seeking comments on the draft. Comments on the draft handbook are due by 31 July 1999. Additional information concerning the draft handbook is available from the Safe Drinking Water Hotline at (800) 426-4791. Copies of the draft handbook are available electronically at <http://www.epa.gov/safewater/>.

EPA Outlines Water Program Vision

The EPA's Assistant Administrator, J. Charles Fox, recently issued his vision for the EPA's national water program. Fox outlined recent accomplishments of the national water program and described focus areas for the national water program for the next few years. For the clean water program, areas include watershed restoration action strategies, Total Maximum Daily Loads (TMDLS), permit backlog, water quality standards program modernization, nonpoint source program upgrades, and water resource protection on Native American lands. For the safe drinking water program, areas include State capacity development, source water assessments, the unregulated contaminant rule, the class V underground injection control rule, and the public notification rule. Fox also outlined three areas of focus for building for the future: improving information about the conditions of waters; building a consensus for increased funding of water programs; and strengthening programs to protect coastal and estuarine waters. For a copy of the water program vision via the Internet, visit <http://www.epa.gov/OW/foxvis.html>.

Miscellaneous:

EPA Requests Public Comment on Enforcement Audit Policy

The EPA announces the preliminary results on the evaluation of its "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) and is soliciting public comment on proposed revisions to the Audit Policy. The changes are based on data from extensive outreach including surveys of policy users. Some of the major preliminary results include: widespread use of the policy including 455 entities disclosing violations at approximately 1850 facilities; a user satisfaction rate at approximately 80% stating that they would use the policy again and recommend it to others; and a reduction of pollutants, and a reduced likelihood of spills and other accidents due to the voluntary discovery and correction of violations. The EPA is also proposing specific improvements to the policy. One significant proposed revision is to extend the prompt disclosure period from 10 to 21 days. A complete list of the preliminary results and proposed revisions will appear in the Federal Register soon. Interested parties should send comments in writing within 60 days of its publication notice. The EPA published the policy in the Federal Register on 22 December 1995 (60 FR 66705). Contact the EPA's Office of Enforcement and Compliance Assurance at (202) 564-2530 for a copy of the policy.

CONFERENCES AND MEETINGS

- **16 June 1999: Rocky Mountain Region General Services Administration Environmental Trade Fair and Training Program - Denver, CO.** The General Services Administration (GSA) will sponsor the Environmental Trade Fair and Training Program to be held at the Denver Federal Center, 6th Avenue and Kipling Street, Building 41. The one-day event will feature free environmental training, programs on building, buying, driving, and saving green and vendors selling environmental products. Displays and booths are invited. Contact the GSA at (303) 236-7329 for more information on booths and displays, or RSVP to the GSA by calling (303) 236-6626.
- **24-26 August 1999: 8th Annual ITAM Workshop - Camp Riley, MN.** This year's workshop, entitled "Bridging the Gap - Working Together to Enhance Military Readiness into the 21st Century," is a forum for the scientific exchange of technologies, ideas, experiences, and lessons learned that relate to the application of Integrated Training Area Management (ITAM) on military training and testing lands. Refer to the ITAM homepage at <http://www.army-itam.com/> or call 927-5166 (DSN) or (757) 878-5166 (commercial) for registration materials and meeting information.

COLORADO

Legislative Developments

The First Regular Session of the 62nd Colorado General Assembly adjourned on 5 May 1999. The Governor has until 5 June 1999 to act on legislation sent for his consideration.

House Bill 1181: Emission Requirements for Government Vehicles

Summary: Makes motor vehicles owned by the federal government or by the state or any agency or political subdivision thereof registered in the program area subject to the same emissions inspections requirements as privately owned motor vehicles.

Status: Signed by the House Speaker and Senate President on 26 April 1999. Transmitted to the Governor on 26 April for his consideration.

Outlook: Governor Owens has voiced no opposition to the bill, and will likely sign it into law.

House Bill 1351: Air Pollution Affecting Visibility

Summary: Directs the Air Quality Control Commission (AQCC) in the Colorado Department of Public Health and Environment to conduct rule-making hearings at least every 5 years, to approve updates to the emission inventories from federal and state activities on public lands resulting in the emission of criteria pollutants affecting visibility in federal Class I wilderness areas. Incorporates such inventories into the state implementation plan (SIP) planning and approval process. Requires public participation in the rule-making hearings on the emission inventories and specifies that the inventories shall include stationary sources, off-highway mobile sources, fires, and biogenic sources. Allows the use of data developed within the preceding 3 years so long as the data are no more than 5 years old. Excludes emissions that the commission determines are of minor significance. For emission inventories relating to federal lands, provides that the cost of such inventories shall be borne by the federal government. Credits federal land managers for a portion of such costs by allowing an offset from fees paid in connection with air pollutant emission notices.

Status: Passed the House on 27 April and the Senate on 3 May. Transmitted to Governor Owens for his consideration on 3 May 1999.

Outlook: It is likely that the Governor will sign HB 1351 into law.

Senate Bill 20: Hazardous Substance Response

Summary: Creates the hazardous substances planning and response assistance fund in the state treasury. Provides that moneys from the fund shall be used to provide grants to public entities and agencies in the state for emergency planning and response purposes. Requires the Colorado Emergency Planning Commission to assess the emergency planning and response needs of the state and report its

findings to the executive director of the Department of Public Safety (DPS). Allows the executive director of the DPS to promulgate rules governing the grant application and administration process.

Status: Passed the House on 27 April. The Senate concurred with the House amendments and repassed the bill and transmitted it to the Governor on 28 April 1999.

Outlook: It is unknown whether the Governor will sign or veto the bill.

Senate Bill 145: Air Quality Standards for Activities on Public Property

Summary: Requires federal land managers to submit land management plans pertaining to all air emissions on those lands (or equivalent planning documents) to ensure compliance with this act by 1 July 1999. Provides review and approval of federal land management plans by the AQCC. Directs the AQCC to require all federal facilities to minimize air emissions using available, practicable, and technologically feasible methods in order to minimize the impact or reduce the potential for such impact on both the attainment and maintenance of national ambient air quality standards and the achievement of federal and state visibility goals. Requires that such land management plans meet the requirements of this act. Importantly, this bill would create requirements for federal land managers, including the DoD, that do not apply to regional, state, local, or private entities.

Status: Passed the House on 29 April and repassed by the Senate with House amendments on 30 April. Transmitted to the Governor for his consideration on 30 April 1999.

Outlook: Governor Owens signed the bill into law on 24 May 1999. The WREO was able to get language exempting DoD installations from the requirements of this bill included in the final version. There is no anticipated impact for Army installations. For additional information, contact Ms. Diane Connolly, WREO Regional Counsel at (303) 289-0459 or DSN 749-2459.

Regulatory Developments

Air Quality:

- **Final Rule: Particulate Matter.** The Colorado Department of Public Health and Environment (CDPHE) has amended its air regulations (Regulation 16) concerning street sanding emissions. The amendments require effected entities around the Denver metro area to achieve a 30% reduction from uncontrolled levels of wintertime street sand and paved road dust emissions on roadways within their jurisdiction. The revisions also include recordkeeping and reporting provisions. No later than 30 June 2001, and each year thereafter, governmental entities and other users of street sanding material must submit a report to the Air Pollution Control Division containing information for the preceding 12 months concerning: the amount of sanding material, salt, and other de-icing chemicals used; total number of miles driven by maintenance trucks; number of lane miles typically sanded; percent of sanded roadways swept within four days of a sanding event; and type of street sanding equipment used. For more information, contact the CDPHE at (303) 692-3100.
- **Proposed Rule: Attainment Designation.** The CDPHE is proposing to petition the EPA to designate the State as "in attainment" for ozone. States are required to identify, by 18 July 1999, areas that are not meeting the standard and to submit a preliminary recommendation as to which areas should be declared nonattainment areas. A public hearing will be held at the CDPHE offices in Denver on 15 July 1999. Contact the CDPHE at (303) 692-3113 for additional information.
- **Proposed Rule: MACT Standards.** The CDPHE is proposing to amend its air regulations (Regulation 8, Parts A and E) to adopt by reference recent amendments to federal Maximum Achievable Control Technologies (MACT) standards. The CDPHE will hold a public meeting on the proposal on 15 July 1999. Contact the CDPHE at (303) 692-3100 for more information.

Solid/Hazardous Waste:

- **Notice of Final Adoption: Emission Standards for Tanks, Surface Impoundments, and Containers.** The CDPHE has adopted amendments to revise the final subparts AA, BB, and CC

rules in order to further clarify the regulatory text of the final standards, and to correct typographical and grammatical errors that exist in the current Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers rules (62 FR 64636 and 64 FR 3382) effective 30 May 1999. Contact the CDPHE at (303) 692-3300 for more information.

- **Notice of Final Adoption: Hazardous Constituents.** The CDPHE has adopted amendments that add a listing for 2,4,6-tribromophenol as a hazardous constituent, promulgates the listing of floor sweeping, off-specification product and spent filter media from the production of 2,4,6-tribromophenol as a hazardous waste, and lists 2,4,6-tribromophenol commercial chemical product as a hazardous waste. It also adopted land disposal restrictions prohibitions and treatment standards for the above wastes effective 30 May 1999. Contact the CDPHE at (303) 692-3300 for more information.

MONTANA

Legislative Developments

Governor Racicot hopes to call a special session of the State Legislature on 16 June 1999 to take up a water rights agreement. The State needs to ratify an agreement with the Crow Tribe that involves water rights, illegal coal taxes, and a mis-surveyed border of the Native American reservation.

Regulatory Developments

No significant regulatory developments were noted for the State of Montana during the reporting period.

NORTH DAKOTA

Regulatory Developments

Air Quality:

- **Direct Final Rule: Revision of State Plan for Designated Facilities/Pollutants.** The EPA announces its approval of the North Dakota State Plan for control of air emissions from existing Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The plan provides for implementation and enforcement of the Emissions Guidelines applicable to each existing HMIWI for which construction was commenced on or before 20 June 1996. If the EPA receives adverse comments on this rule, it will be withdrawn, and all public comments received will be addressed in a subsequent final rule. Interested parties commenting on this action should do so at this time. Contact the EPA at (303) 312-6526 for a copy of the State Plan or additional information.

SOUTH DAKOTA

Regulatory Developments

No significant regulatory developments were noted for the State of South Dakota during the reporting period.

UTAH

Regulatory Developments**Air Quality:**

- **Proposed Rule: Gasoline Transfer and Storage.** R307-328 requires gasoline transport vehicles and the bulk plants and service stations which receive gasoline from them to capture the vapors released when gasoline is transferred, and is usually called Stage I Vapor Recovery. It does not apply to dispensing gasoline to vehicles. The proposed rule change would first add a new Subsection R307-328-1(1) to specify that the rule applies to transport vehicles and gasoline dispensing stations in Davis, Salt Lake, Utah, and Weber counties. It would add a new Section R307-328-2 specifying that sources in Davis and Salt Lake Counties were required to meet the compliance schedule in Section R307-325-4, that sources in Utah and Weber Counties shall be in compliance by 2 May 2000, and sources in any area later designated as nonattainment for ozone shall comply within six months after designation to nonattainment. Contact the Utah Department of Environmental Quality (UDEQ) at (801) 536-4042 for more information.
- **Proposed Rule: Procedures for Testing of Vapor Recovery Systems.** R307-342 requires that gasoline delivery equipment be equipped to provide leak-tight loading and off-loading in Salt Lake and Davis County, and specifies the procedures by which contractors may become certified to test for leak tightness. The proposed change would indicate that the rule applies in Utah and Weber Counties, as well as Salt Lake and Davis Counties. Contact the UDEQ for more information: (801) 536-4042.
- **Notice: Ozone Nonattainment Designation:** The Utah Air Quality Board requests public comment on a proposal to recommend that Salt Lake and Davis Counties be designated nonattainment areas for ozone. Comments from the public will be accepted through 15 June 1999. A hearing will be held on 8 June 1999 at the UDEQ. Contact the UDEQ at (801) 536-4248 for more information.

WYOMING

Regulatory Developments**Solid/Hazardous Waste:**

- **Notice: Wyoming RCRA Program.** The Wyoming hazardous waste program was authorized by the EPA and is to be revised under the Resource Conservation and Recovery Act (RCRA). Wyoming is seeking authority to expand their hazardous waste program as published in the 25 February 1999 Federal Register. The EPA has withdrawn its initial approval and is reopening the public comment period on the proposed rule for Wyoming. If there is sufficient interest, a public hearing will be held to accept verbal input. Written comments will be accepted until 22 July 1999. For questions, contact the EPA at (303) 312-6312 or the Wyoming Department of Environmental Quality (WDEQ) at (307) 777-7541.

Miscellaneous:

- **Notice: Brownfields Redevelopment.** The EPA has withdrawn its support for Wyoming's new brownfields law, passed last session as Senate Bill 147, leading to speculation that the EPA may revoke the State's primacy over air and water laws. The WDEQ will likely sponsor legislation next session to rewrite the recently passed brownfields law; Governor Geringer let the bill become law without his signature. The EPA says the new law relaxes requirements that met the minimum allowable standards regarding cleanup of hazardous sites under the old law. The WDEQ's latest proposal to revise the new law will be a topic for discussion before the Joint Minerals Committee held on 13 May 1999. Contact the WDEQ at (307) 777-7541 for additional information.